

REMARKS

Claims 85, 88-92, 94-96, 98-99, 101, 104, 107-108, 113-117, 119, 122-126, 128-130, 132-133, 135, 140-141, 146-152, 154, 157, 159 and 162-163 are currently pending in the application. Claims 84, 86-87, 93, 97, 100, 102-103, 105-106, 109-112, 118, 120-121, 127, 131, 134, 136-139, 142-145, 153, 155, 156, 158, 160-161 are canceled. Claims 85, 117, 119, 150, 152, 154 and 157 have been amended.

The phrase “said infectious chimeric PIV being attenuated for replication at least 10-fold in the respiratory tract of a primate host infected with said chimeric PIV compared to wild-type HPIV3” has been deleted from claim 85 to better define the invention.

The phrase “wherein a virus comprising a genome or antigenome comprising said polynucleotide is attenuated for replication by at least 10-fold compared to wild type HPIV3 in the respiratory tract of a primate” has been deleted from claim 119 to better define the invention.

Claims 117, 150 and 152 have been amended to remove dependencies from canceled claims. Claims 154 and 157 have been amended to remove misspellings. No new matter has been added by way of this amendment. The Examiner is respectfully requested to reconsider her rejections in view of the amendments and remarks as set forth herein below.

Claim Objections

The Examiner has objected to claims 153-157 for misspelling the term, “infectious”. The claims have been amended to correct this error. Applicants respectfully request that this objection be withdrawn.

Claim Rejections – 35 USC §102

Claims 84, 85, 87, 89-96, 99-104, 117, 118, 119, 121, 123-130, 133-137 and 150-152 stand rejected under 35 USC §102(e) as assertedly being anticipated by US Patent No. 5,869,036 to Belshe et al. (“Belshe”). Applicants respectfully traverse.

Independent claims 85 and 119 recite a chimeric PIV3 genome or antigenome comprising a polynucleotide encoding a wild-type L protein. Because Belshe clearly does not disclose a hybrid genome encoding a wild-type L protein, Belshe cannot anticipate claims 85 and 119. Although the Examiner states that “Belshe’s construct is a cp45 genome with a wild type L gene introduced” and points to Example 5 in Belshe to support her contention, (page 5 of the office action), it is clear that the cp45 genome does not have the wild-type L gene introduced into it. The wild type L gene is in its own plasmid construct. Resulting viruses package a genome that is a cp45 viral genome, including all of the mutations shown in FIG. 1 of the Belshe reference. (See also Applicants’ Exhibit 1 as filed, which illustrates the experiments in Example 5 of Belshe). Therefore, independent claims 85 and 119, and their dependents thereon, are not anticipated by Belshe.

Claims 84, 87, 93, 100, 102-103, 118, 121, 127, 134, 136-137 are canceled.

For the above reasons, Applicants respectfully request that the 102(e) rejection of claims 84, 85, 87, 89-96, 99-104, 117, 118, 119, 121, 123-130, 133-137, 150-152 be withdrawn.

Rejection under non-statutory double-patenting

The Examiner presents a number of provisional obviousness-type double patenting rejections. Applicants request that these issues should be held in abeyance since prosecution is continuing in both cases and the issue may be resolved by amendments in the various applications. See MPEP 804. If necessary, Applicants will file a Terminal Disclaimer following the procedure outlined in the above-mentioned section of the MPEP.

The present application well-describes and claims patentable subject matter. The favorable action of allowance of the pending claims and passage of the application to issue is respectfully requested.


In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should the Examiner contemplate issuance of an Office Action other than a Notice of Allowance, she is respectfully requested to contact Mark J. Nuell (Reg. No. 36,623) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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